

41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against surety -- Loss of bond.

(1) (a) Before a dealer's, special equipment dealer's, crusher's, or body shop's license is issued, the applicant shall file with the administrator a corporate surety bond in the amount of:

(i) \$50,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a motor vehicle dealer's license;

(ii) \$20,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a special equipment dealer's license;

(iii) \$10,000 for a motorcycle, off-highway vehicle, or small trailer dealer's or crusher's license; or

(iv) \$20,000 for a body shop's license.

(b) The corporate surety shall be licensed to do business within the state and have a rating of at least B+ by the A.M. Best Company.

(c) The form of the bond:

(i) shall be approved by the attorney general;

(ii) shall be conditioned upon the applicant's conducting business as a dealer without:

(A) fraud;

(B) fraudulent representation;

(C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin; or

(D) violating Subsection 41-3-402(1) which requires payoff of liens on motor vehicles traded in; and

(iii) may be continuous in form.

(d) The total aggregate liability on the bond to all persons making claims, regardless of the number of claimants or the number of years a bond remains in force, may not exceed the amount of the bond.

(2) (a) A cause of action under Subsection (1) may not be maintained against a surety unless:

(i) a claim is filed in writing with the administrator within one year after the cause of action arose; and

(ii) the action is commenced within two years after the claim was filed with the administrator.

(b) The surety or principal shall notify the administrator if a claim on the bond is successfully prosecuted or settled against the surety or principal.

(3) (a) A surety or principal may not make a payment on a surety bond to any claimant until six months have expired from the date when the first claim on the bond was filed with the surety or principal in writing.

(b) After six months have expired following the filing of the first bond claim, the surety or principal shall:

(i) assess the validity of all claims on the bond; and

(ii) submit a distribution assessment determined in accordance with Subsection (3)(c) regarding the bond proceeds to the claimants of valid claims for approval.

(c) (i) If the total verifiable claims on the bond are less than the bond amount, then each bond claimant shall be entitled to the full amount of a valid claim.

(ii) If the total verifiable claims exceed the bond amount, then the proceeds shall be distributed pro rata to the bond claimants of valid claims.

(d) If the distribution assessment under Subsection (3)(b) is not unanimously approved by the claimants of all valid claims on the bond, the principal or surety shall file an interpleader action in the state district court where the defaulting dealer was licensed.

(4) (a) A person making a claim on the bond shall be awarded attorney fees in cases successfully prosecuted or settled against the surety or principal if the bond has not been depleted.

(b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an interpleader action filed under Subsection (3)(d).

(5) (a) (i) If a dealer, body shop, or crusher loses possession of the bond required by this chapter, the dealer, body shop, or crusher license is automatically suspended.

(ii) All licenses, pocket cards, temporary permits, and special plates issued to the licensee shall be immediately returned to the administrator.

(b) A dealer, body shop, or crusher may not continue to use or permit to be used licenses, pocket cards, temporary permits, or special plates until the required bond is on file with the administrator and the license has been reinstated.

(6) A representative or consignee of a dealer is not required to file a bond if the dealer for whom the representative or consignee acts fully complies with the provisions of this chapter.

Amended by Chapter 342, 2010 General Session